

1 Jerry Harkins # 85126

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6 UNITED STATES DISTRICT COURT

7 DISTRICT OF NEVADA

8 * * * * *

9 Jerry Harkins)

Case No. 3:10-cv-00372-ECH-RAM

10 Petitioner,,)

11 -vs-)

12 Sack Palmer, et al)
13 Respondents.)

**MOTION FOR
APPOINTMENT OF COUNSEL**
Second Request

14
15 COMES NOW Petitioner, Jerry Harkins, in pro se, and moves
16 this Court for an order appointing him counsel in and for the instant § 2254
17 habeas corpus proceeding.

18 This motion is made and based upon 18 U.S.C. § 3006A(g), 28 U.S.C.
19 § 1915(e)(1), 28 U.S.C. § 2254(h); all papers, pleadings and documents on file
20 herein; and the following points and authorities.

21 **POINTS AND AUTHORITIES**

22 **I. STATEMENT OF FACTS**

23 Petitioner is unable to afford counsel. See Application to Proceed In
24 Forma Pauperis on file herein.

25 The substantive issues and procedural matters in this case are too complex
26 for Petitioner's comprehension and abilities.

27 Petitioner, by reason of his incarceration, cannot investigate, take
28 depositions, or otherwise discover evidentiary materials on his own accord.

Petitioner's sentence structure is Life.

There are are not additional facts attached hereto on additional page(s) to be incorporated herein.

Counsel could not only assist Petitioner with a much better presentation of the substantive and procedural issues before this Court, e.g., merits of the claims, AEDPA's § 2254(d) test, exhaustion, etc., but counsel would likewise make much easier this Court's task of discerning the issues and adjudicating them as upon a competent counsel's ability to present same to the Court.

The ends of justice would best be served in this case via the appointment of counsel, as Petitioner's sentence structure, in conjunction with the complexities of the legal issues herein, plead for such an appointment.

II. ARGUMENT FOR APPOINTMENT

Appointment of counsel in § 2254 cases is authorized within 18 U.S.C. § 3006A(g) and 28 U.S.C. §§ 1915(e)(1); 2254(h). This Court may appoint counsel where the "interests of justice" so require. Jeffers v. Lewis, 68 F.3d 295, 297-98 (9th Cir. 1995). This interest is best served when indigent petitioners who are unable to "adequately present their cases" are appointed counsel to do so for them. Id.

Although appointment is usually within this Court's sound discretion, a handy formula for this Court's consideration is a balancing of the complexities of the issues with a consideration of the severity of the petitioner's penalty. Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir.), cert. denied, 481 U.S. 1023 (1987). Ultimately, however, absent a due process implication, this Court has discretion to appoint counsel when it feels that it promotes justice in doing so. Id. See Brown v. United States, 623 F.2d 54, 61 (9th Cir. 1980)(court must appoint counsel where the complexities of the case are such that denial of counsel would amount to denial of due process); Hawkins v. Bennett, 423 F.2d 948 (8th Cir. 1970)(counsel must be appointed where petitioner is a person of

1 such limited education as to be incapable of presenting his claims fairly).

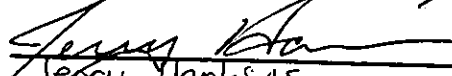
2 Petitioner submits that the facts above, in conjunction with these legal
3 principles, compel appointment of counsel. Indeed, the complexities of the
4 issues in relation to Petitioner's sentence, implicate the need of counsel to
5 promote not only justice, but fairness, as well. Jeffers, 68 F.3d at 297-98.

6 **III. CONCLUSION**

7 For the reasons set forth above, this Court should appoint counsel to
8 represent Petitioner in and for all further proceedings in this § 2254 habeas
9 corpus action.

10 Dated this 11th day of May, 20 11.

11 Respectfully submitted,

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13 Jerry Harkens # 85126

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